

Application No. 10/658,910
Response Dated November 21, 2005
Reply to Office Action of October 19, 2005

REMARKS/ARGUMENTS

The Examiner has required the Applicant, in the Office Action dated October 19, 2005, to elect one of three alleged patentably distinct species. Responding thereto, Applicants hereby elect, with traverse, Species I presently defined by Figures 1-8B, 11 and 12, and Claims 1-13. Applicant respectfully requests reconsideration and withdrawal of the restriction requirement.

Applicant refers to MPEP §802.01, 806.04(a)-(i) and 806.05-806.05(i) for support that the restriction is inappropriate. As provided therein, the question of restriction must be determined by both the practice applicable to election of species and the practice applicable to other types of restriction. If restriction is improper under either practice, it should not be required.

The Examiner is requested to reconsider the restriction requirement under 35 USC §121 to elect a single invention. The requirements of §121 are that the inventions be independent and distinct. Both requirements are necessary to maintain a restriction requirement. Applicant maintains that the Examiner has not focused upon the two requirements of being independent and distinct. It is noted that M.P.E.P. §802.01 provides a definition of independent as follows:

The term "independent" [i.e., not dependent] means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation or effect, for example, [1] species under a genus which species are not usable together as disclosed or [2] process and apparatus incapable of being used in practicing the process.

Applicant contends that Species I to III are not independent of each other, because the bottle cap shown in Figs. 9A and 9B (Species II) and Figs. 10A and 10B (Species III) contain the same cap body and spray assembly of the bottle cap of Species I.

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Furthermore, Claim 7 is generic for both Species I and II.

Applicant has endeavored to particularly point out and distinctly claim their invention. Applicant submits that the embodiments identified by the Examiner would all be found in the same general search and hence would not require any undue searching by the Examiner. Furthermore, the search required for Species I is also required for Species II and III, because the same cap body and spray assembly are present in the bottle cap of Species II and III.

Notwithstanding, Applicant appreciates the Examiner's desire to separate the group inventions, but it is not readily understood that examining Species I to III together would cause a serious burden on the PTO.

On the other hand, the alleged three Species resulting from the restriction requirement would cause Applicant additional expenses and time to prosecute separate patent applications. The burden placed upon Applicants for filing separate cases directed to each of the Inventions is respectfully submitted not to be outweighed by the burden placed upon the Patent Office by a coextensive examination of these Species in one application.

Applicant believes that it would be more efficient to examine all the claims rather than expend additional time prosecuting divisional applications relating to the specific Species II and III. Consequently, in the interest of efficiency, it is respectfully submitted that the restriction requirement is untenable and ought to be withdrawn as to Species I to III.

For the above reasons, reconsideration of the restriction requirements for the alleged three Species set for in the outstanding Office Action is respectfully requested.

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Furthermore, Applicant submits that upon the allowance of a generic claim, Applicant is entitled to consideration of claims to additional species which are written in dependent form, or otherwise include all the limitation of the allowed generic claim as provided by 37 CFR1.141.

11/21/2005
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